

Application Number 10/623,781
Amendment dated June 22, 2005
Response to Office Action of March 22, 2005

Remarks/Arguments

Claims 1-25 stand rejected under 35 USC 102(e) as being anticipated by Tavkhelidze et al (US 6,417,060).

Examiner asserts that the teaching in the '060 patent at column 6 and lines 5-11 anticipate claims 11-25, and that the introduction of cesium vapor, mentioned in the '060 patent at column 3 line 61, and column 6, lines 24-26 anticipate claims 1-10. Examiner assertion that the preamble terms 'for reducing surface deformation' and 'for reducing evaporative losses' in claims 1-25 are merely statements of intended use.

Claim 1 has been amended to further improve the clarity of what is being claimed in the present invention. In re: Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. In the '060 patent, the process is one in which 'considerable vapor pressure is developed inside the sandwich' (column 5, lines 7 and 8) as the temperature is raised, which forces the two halves of the sandwich apart, whereupon the vapor pressure is dissipated as the sacrificial layer (in vapor form) is removed. The '060 patent is clearly directed to a method for fabricating a pair of electrodes whilst the process of the present invention is one in which a vapor pressure is increased in a space between the electrodes of a gap diode device in operation. Thus not every element in claim 1 (as amended) is to be found in the '060 reference, and Applicant respectfully requests that Examiner withdraw his rejection of claims 1-10.

In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997), if a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the assertion. The prior art manipulation taught at column 6 and lines 5-11, especially when evaluated against the description of FIG. 5 beginning at column 5 and line 12, is clearly to do with an intermediate step in the formation of an electrode pair, after which the material of the sacrificial layer is removed (see column 5 lines 45-48; 60-63; and column 6, lines 14-17). Thus, the process in the '060 patent is one in which material in vapor form is removed from a space

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between the electrodes, whilst the process of the present invention is one in which material in vapor form is introduced into a space between the electrodes. The prior art manipulation disclosed in the '060 patent is not therefore capable of performing the intended use recited in the preamble to claims 11-25, and Applicant respectfully requests that Examiner withdraw his rejection of claims 11-25.

Applicant respectfully submits that this application, as amended, is in condition for allowance, and such disposition is earnestly solicited. No new material has been added by this amendment. If the Examiner believes that discussing the application the Applicant over the telephone might advance prosecution, Applicant would welcome the opportunity to do so.

Respectfully submitted,



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Applicant